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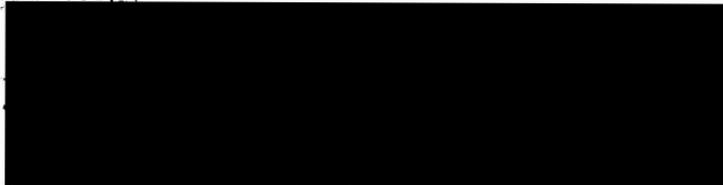
OFFICE: VERMONT SERVICE CENTER

DATE: **AUG 14 2006**

[EAC 01 177 51861]

IN RE:

Applicant:



APPLICATION:

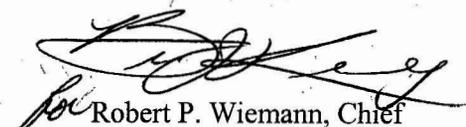
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record shows that the applicant filed his initial TPS application on April 10, 2001. Because no evidence was furnished to establish continuous residence and continuous physical presence in the United States, a Notice of Intent to Deny (NOID) was issued on May 5, 2003, requesting that the applicant submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. There is no evidence in the record to indicate that the applicant responded to the NOID.

On July 1, 2003, the director erroneously stated that the applicant filed a TPS re-registration on April 10, 2001; however, because the initial application was denied on May 5, 2003, the applicant was not eligible to apply for re-registration for TPS.

The applicant appealed the director's decision on August 23, 2003, and stated that he will be submitting additional evidence within 30 days of the filing of the appeal. No additional evidence or statement, however, was received. The AAO also noted that the director erroneously denied the application for re-registration on July 1, 2003, because the applicant was ineligible for re-registration since the initial application was denied on May 5, 2003. The AAO stated that the application was not denied on May 5, 2003, but rather, the Notice of Intent to Deny was issued on that date, and there is no evidence of a denial subsequent to the issuance of the NOID and the issuance of the July 21, 2003, denial, alluding to a previous denial dated May 5, 2003. The AAO, therefore, remanded the case to the director on January 25, 2005, so that the director could issue a new decision based on the evidence of record.

On February 4, 2005, the applicant responded to the AAO's notice remanding the case to the director. He stated that he has been residing in the United States since or before February 13, 2001, and submitted the following documents:

1. A copy of a lease agreement between the applicant and [REDACTED] dated September 1, 2000, for the lease of [REDACTED] for \$450 a month.
2. Copies of Form 1040, Income Tax Return, for the years 2000 and 2001, for [REDACTED] listing the applicant as her dependent.
3. Copies of pay statements dated June 30, 2001, September 21, 2001, and December 14, 2001.
4. A copy of State of Virginia driver's license issued on October 2, 2001.
5. A copy of "Compliance Summary as of 2/26/02" from the Virginia Department of Motor Vehicles.

In compliance with the AAO's January 25, 2005 remand instructions, the director reviewed the evidence of record and determined that the applicant had failed to establish continuous residence and continuous physical presence in the United States during the requisite period, and denied the initial application on March 21, 2005.

The applicant appeals the director's decision on April 21, 2005. He states that he is a citizen of El Salvador who entered the United States without inspection. He resubmits copies of the documents listed as Nos. 1, 2, 3, 4, and 5 above.

The lease agreement (No. 1 above) cannot be found credible as it is noted that the applicant was 17 years of age when he signed the lease agreement on September 1, 2000, and he had not established that he had a source of income at that time to pay the \$450 monthly lease. It is noted that both Forms 1040 (No. 2 above) were prepared on February 24, 2002, and there is no evidence that the Forms 1040 were mailed to the Internal Revenue Service. It is further noted that although the Form 1040 listed the applicant as the dependent of [REDACTED] line 6c(4) of the form was not "checked" to show that the applicant is a "qualifying child for child tax credit." The applicant furnished only three earnings statements (No. 3 above). The June 30, 2001 pay statement did not list the name of the employer. Although the September 21, 2001 and December 14, 2001 pay statements listed [REDACTED] it is not clear whether this is the name of the company where the applicant works. The applicant could have submitted letters of employment from the establishments where he worked to establish that he was, in fact, their employee. It is noted, however, that the evidence furnished, listed as Nos. 3, 4, and 5 above, are dated subsequent to the filing of the TPS application. The applicant claimed to have lived in the United States since January 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has failed to submit sufficient evidence to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

It is noted that the Federal Bureau of Investigation fingerprint results report indicates that on November 17, 1999, the applicant (name used: [REDACTED]) was apprehended by the U.S. Border Patrol near Del Rio, Texas, and he was placed in removal proceedings.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.